

STATE OF WISCONSIN**CIRCUIT COURT****MILWAUKEE**

Darnell Kelley et al vs. Menard, Inc. et al

**Electronic Filing
Notice**

Case No. 2022CV003413

Class Code: Other-Personal Injury

FILED

05-27-2022

George L. Christenson

Clerk of Circuit Court

2022CV003413

Honorable Hannah C.
Dugan-31

Branch 31

MENARD, INC.5101 MENARD DRIVE
EAU CLAIRE WI 54703

DANE COUNTY LEGAL NOTICE

SERVED BY: K.V. Sanchez
ON 6/2/22 AT 12:59 P M

Case number 2022CV003413 was electronically filed with/converted by the Milwaukee County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 1b1346

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4120.

Milwaukee County Circuit Court
Date: May 27, 2022

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NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG...
2595 INTERSTATE DRIVE, SUITE 103
HARRISBURG PA 17110

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ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVI...
PRESCOTT BLOOM BUILDING
201 SOUTH GRAND AVENUE, EAST
SPRINGFIELD IL 62762

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SECRETARY OF THE DEPT. OF HEALTH AND HUMAN SERVICE...
615 F. HUBERT H. HUMPHREY BLDG
200 INDEPENDENCE AVENUE, SW
WASHINGTON DC 20207

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STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

DARNELL KELLEY and PHYLLIS LEE-KELLEY
Husband and Wife,
1505 N. Lotus Avenue
Chicago, IL 60651;

Plaintiffs,

ILLINOIS DEPARTMENT OF HEALTHCARE AND
FAMILY SERVICES
Prescott Bloom Building
201 South Grand Avenue, East
Springfield, IL 62762; and

XAVIER BECERRA
SECRETARY OF THE DEPT. OF HEALTH
AND HUMAN SERVICES;
615 F. Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20207;

Case Code 30107

Subrogated Plaintiffs,

v.

MENARD, INC.
5101 Menard Drive
Eau Claire, WI 54703-9604; and

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.
2595 Interstate Drive, Suite 103
Harrisburg, PA 17110;

Defendants.

SUMMONS

**THE STATE OF WISCONSIN
TO EACH PERSON NAMED ABOVE AS A DEFENDANT:**

YOU ARE HEREBY notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 901 N. Ninth Street, Milwaukee, Wisconsin, 53233, and to GAGLIARDI LAW LLP, plaintiffs' attorneys, whose address is 24414 75th Street, Salem, Wisconsin, 53168. You may have an attorney help or represent you.

If you do not provide a proper answer within the 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 27th day of May, 2022.

GAGLIARDI LAW LLP

Electronically Signed Paul V. Gagliardi

By:

**Paul V. Gagliardi, State Bar No. 01000629
A Member of the Firm**

**24414 75 Street
Salem, WI 53168
(262) 843-3400
(262) 843-3147 FAX**

FILED

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Clerk of Circuit Court

2022CV003413

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Dugan-31

Branch 31

STATE OF WISCONSINCIRCUIT COURTMILWAUKEE COUNTY

DARNELL KELLEY and PHYLLIS LEE-KELLEY
Husband and Wife;

Case Code 30107

Plaintiffs,

ILLINOIS DEPARTMENT OF HEALTHCARE AND
FAMILY SERVICES and
XAVIER BECERRA, SECRETARY OF THE DEPT.
OF HEALTH AND HUMAN SERVICES

Subrogated Plaintiffs;

v.

MENARD, INC. and
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.;

Defendants.

COMPLAINT

NOW COMES the above-named plaintiffs, by their attorneys, GAGLIARDI LAW LLP,
and complains against the above-named defendants as follows:

1. That the plaintiffs, Darnell Kelley and Phyllis Lee-Kelley, are adult residents of the City of Chicago, County of Cook, State of Illinois, and reside at 1505 N. Lotus Avenue, and at all times material hereto Darnell Kelley was the lawful spouse of Phyllis Lee-Kelley.

2. Illinois Department of Healthcare and Family Services, has oversight responsibility for Illinois medicaid recipients and is located at Prescott Bloom Building, 201 South Grand Avenue, East Springfield, Illinois 62762.

3. Xavier Becerra, Secretary of the Department of Health and Human Services, has oversight responsibility for the Health Care Financing Administration, the agency responsible for administering the federal medicare program. Upon information and belief, the medicare program paid health claims on behalf of the plaintiff for medical care and services rendered as a result of the accident which is the subject of this case. Pursuant to 42 U.S.C. §1395y(b)(2), medicare is entitled to reimbursement for related paid claims if plaintiff recovers through settlement or judgment. Plaintiff asserts no claim against the United States, its agencies or employees.

4. That upon information and belief, the defendant, Menard, Inc., hereinafter referred to as "Menard", is a corporation with principal offices located at 5101 Menard Drive, Eau Claire, Wisconsin 54703-9604, and is in the business of a retail store, including the rental of ladders.

5. That the defendant, National Union Fire Insurance Company of Pittsburgh, Pa., hereinafter referred to as "National Union", is a foreign insurance corporation with offices located at 2595 Interstate Drive, Suite 103, Harrisburg, Pennsylvania 17110, and is in the business, among other things, of providing liability insurance for defendant, Menard.

6. Prior to the plaintiff's injuries, which will be set forth below, the plaintiff rented a ladder from the defendant, Menard.

7. That on or about August 25, 2019, while at a residence in Milwaukee, the plaintiff was performing some roofing work with the ladder that he rented from the defendant, Menard.

During the course of such use through no fault or negligence on the part of the plaintiff, the ladder broke causing serious bodily harm and injury to the plaintiff and property damage.

8. That defendant, Menard, breached its duties to the plaintiff and was negligent in the following ways, among others:

- A. Failing to adequately inspect said ladder so as to discover the defects of the same.
- B. Failing to adequately warn the consuming public of said defect when the same became known and to recall and/or repair the same.
- C. Failing to provide adequate and sufficient instruction and warning for the use and maintenance of the same.

SECOND CAUSE OF ACTION

9. That as and for a second cause of action, plaintiff realleges all foregoing allegations and make them a part hereof as though fully set forth herein.

10. That at all times material hereto, said ladder, was designed, manufactured, distributed and rented in a defective condition so as to be unreasonably dangerous in that said ladder failed causing the above described accident and injury.

11. That said defective and unreasonably dangerous product as aforesaid, was a substantial factor in causing said accident, and in the injuries and damages as set forth above.

THIRD CAUSE OF ACTION - LOSS OF CONSORTIUM

12. That as and for a third cause of action of this complaint, plaintiffs hereby reallege all of the foregoing allegations and make them a part hereof as if fully set forth herein.

13. That the plaintiffs, Darnell Kelley and Phyllis Lee-Kelley, were and are husband and wife and they have suffered a loss of consortium as a result of the negligence of the

defendant, Menard, as described above and will continue to suffer loss of society and companionship of each other into the future.

WHEREFORE, plaintiff prays for judgment against the defendants as follows:

A. For personal injuries sustained by the plaintiff in an amount to be determined by a jury of the plaintiff's peers.

B. For a reasonable sum of money to be awarded by a jury of plaintiffs' peers for loss of consortium.

C. That all subrogation claims are extinguished.

D. For costs and disbursements of this action.

E. For reasonable attorneys fees.

F. For whatever other relief the court deems fair and equitable under the circumstances.

PLAINTIFFS HEREBY DEMAND A TRIAL BY A TWELVE-PERSON JURY

Dated at Kenosha, Wisconsin, this 27th day of May, 2022.

GAGLIARDI LAW LLP
Attorneys for Plaintiffs

Electronically Signed Paul V. Gagliardi

By:

Paul V. Gagliardi
State Bar No. 01000629

24414 75 Street
Salem, WI 53168
(262) 843-3400
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